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IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 397

STANDARD CIGAR COMPANY,
a Florida corporation,

Petitioner,

vs.

TABACALERA SEVERIANO JORGE, S. A.,
a Cuban corporation,

and

SEVERIANO JORGE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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and

SEVERIANO JORGE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, Standard Cigar Company, a corporation organized and existing under the laws of the State of Florida, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, dated and entered March 18, 1968, reversing a final judgment of the United States District Court for the Middle District of Florida, Tampa Division, which had dismissed, be-

cause of the application of the act of state doctrine, the action of the respondents, Tabacalera Severiano Jorge, S.A., a corporation organized and existing under the laws of the Republic of Cuba, and Severiano Jorge.

OPINIONS BELOW

The opinion (Findings of Fact and Conclusions of Law) of the district court (R. 162-189) has not been reported but is printed in App. A, p. 1, *infra*. The opinion of the court of appeals (R. 201-225) is reported in 392 F.2d 706. A copy thereof is printed in App. B, p. 22, *infra*. The opinion of the court of appeals in a related case, *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* is reported in 392 F.2d 716, and a copy thereof is printed in App. C, p. 42, *infra*.

JURISDICTION

The judgment of the court of appeals sought to be reviewed was dated and entered on March 18, 1968 (R. 227). A timely petition for rehearing (R. 228-241) filed by petitioner was denied by an order dated and entered on May 23, 1968 (R. 243). The jurisdiction of this Court is invoked under 28 U.S.C., § 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err in deciding that the situs of the debt due by the petitioner to Tabacalera was in Florida, the only place the debt could be collected from the petitioner, that the said indebtedness was not property "within Cuba's own territory" which the Cuban Government acquired by virtue of its intervention, seizure and takeover of Tabacalera, and that, therefore, the act of state doctrine is not applicable herein?

2. Did the Court of Appeals err in deciding that the intervention, seizure and takeover of Tabacalera by the Cuban Government and its interventor did not operate to revoke or suspend the power of attorney theretofore given by Tabacalera to Messrs. Jorge and Romano, and that the assignment which Mr. Romano executed in the name of Tabacalera in his capacity as attorney in fact therefor, even though made after the intervention, was a valid assignment which gave Mr. Jorge the right to collect the account from the petitioner?

STATUTES AND RESOLUTIONS INVOLVED

The following Cuban statutes, decrees and resolutions are involved, to-wit: Cuban Decree No. 1384, of April 9, 1951, Cuban Law No. 568, of September 29, 1959, Cuban Law No. 647, of November 24, 1959, Cuban Law No. 843, of June 30, 1960, and Resolution No. 20260, of September 15, 1960.

The pertinent text from Decree No. 1384 is set forth in App. D, p. 44, *infra*. The pertinent text from Cuban Law No. 568 is set forth in App. E, p. 48, *infra*. The pertinent text from Cuban Law No. 647 is set forth in App. F, p. 49, *infra*, and the English translation thereof is set forth in App. G, p. 55, *infra*. The pertinent text from Cuban Law No. 843 is set forth in App. H, p. 61, *infra*, and the English translation thereof is set forth in App. I, p. 64, *infra*. The pertinent text from Resolution No. 20260 is set forth in App. J, p. 67, *infra*.

The following United States statutes and proclamations also are involved, to-wit, Hickenlooper Amendment to the Foreign Assistance Act of 1964, 22 U.S.C., § 2370 (e) (2) and Proclamation No. 3447, of February 3, 1962, 3 C.F.R. 157.

The pertinent part of 22 U.S.C., § 2370 (e) (2) is set forth in App. K, p. 72, *infra*. The pertinent part of Proclamation No. 3447 is set forth in App. L, p. 73, *infra*.

STATEMENT OF THE CASE

On October 26, 1960, the respondent, Tabacalera Severiano Jorge, S.A., a Cuban corporation having its principal place of business in Havana, Cuba (hereinafter called "Tabacalera"), filed its complaint in the district court against the petitioner, Standard Cigar Company, a Florida corporation having its principal place of business in Tampa, Florida, seeking to recover the sum of $100,894.28 for tobacco sold and delivered by the respondent to the petitioner between July 1, 1960 and July 25, 1960 (R. 1-2).

The petitioner moved to dismiss the complaint upon the ground of *forum non conveniens*, or, in the alternative, moved the court to abstain from exercising jurisdiction because the matter was controlled solely by laws, resolutions, proclamations and decrees of the Cuban government and supported its motion by an attached affidavit of Stanford J. Newman, president of the petitioner (R. 3-41). The court heard arguments on the motion, reserved ruling thereon and required the petitioner to file an answer (R. 42).

On April 25, 1961, the petitioner answered, asserting several alternative defenses, including a defense that before the purchase price of the tobacco was payable, the Castro government in Cuba had intervened the entire Cuban tobacco industry, including Tabacalera, had removed the stockholders, directors and officers from control of the corporation, and the interventor appointed by the Cuban government had advised peti-

tioner that no person was authorized to effect collection of the account in the name of Tabacalera in the United States and a request for payment of the same to the interventor was made. The answer charged that the matters involved in the suit were governed by the laws, resolutions, proclamations and decrees of the Cuban government and that any judgment entered herein would not be *res judicata* as to such government, and the court was asked to abstain from exercising jurisdiction. Further, in view of the intervention, it was alleged that Tabacalera was not represented in the action by proper parties and therefore could not maintain the action. Additionally, it was alleged that on or about April 1, 1961, Tabacalera had assigned to Severiano Jorge any right of action which it had against petitioner (R. 42-46).

A final judgment was entered May 22, 1961, dismissing the action on the ground of *forum non conveniens* and alluding to the act of state doctrine (R. 52-54).

On October 17, 1962, the court of appeals reversed the final judgment of the district court, and held that neither of the aforementioned doctrines was applicable. *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* 311 F.2d 438 (5 Cir. 1962); *Menendez Rodriguez v. Pan-American Life Insurance Co.,* 311 F.2d 429 (5 Cir. 1962).

Petitioner sought a writ of certiorari to review the judgment of the court of appeals, and this Court, in Case No. 846, October Term, 1962, *Standard Cigar Co. v. Tabacalera Severiano Jorge, S.A.,* 376 U.S. 780 (1964), vacated the opinion and judgment of the court of appeals and remanded the case to the court of appeals for further consideration in the light of *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398 (1964).

The court of appeals further considered the matter, and thereafter remanded the case to the district court to afford the parties opportunity to be heard upon de-

velopment of such record as was found necessary by the district court for its determination of the applicability of the act of state doctrine (R. 57-58, 61-62). *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Company,* 340 F.2d 708 (5 Cir. 1965); *Menendez Rodriguez v. Pan-American Life Insurance Co.,* 340 F.2d 707 (5 Cir. 1965).

In the district court, the final judgment of June 21, 1961, dismissing the cause, without prejudice, was set aside and the parties were given an opportunity to file amended pleadings (R. 65-66).

On November 18, 1965, an amended complaint was filed wherein Tabacalera and the other respondent, Severiano Jorge, both were named as plaintiffs (R. 67-68). The amended complaint alleged, among other things, that Severiano Jorge was the equitable owner of all of the stock of Tabacalera and that since the institution of the suit Tabacalera, on April 1, 1961, had assigned to him all of its interest in the claim sued on. The amended complaint further alleged that Severiano Jorge was at the time of the commencement of the suit a citizen of Cuba and a refugee from the Cuban revolution, and that he had since that time established his residence in Florida and intended to become a United States citizen when he met the residence requirements.

The petitioner answered the amended complaint, asserting five separate defenses (R. 83-86). In its defenses, the petitioner asserted that the contracts for the sale and purchase of the tobacco were made and performed or to be performed in Cuba; that, under the act of state doctrine, the district court should not sit in judgment on the acts of the Cuban government in intervening or nationalizing, in Cuba, Tabacalera, a Cuban

corporation, and taking over its business and assets, including the account receivable involved in the suit; that the stockholders, directors and officers of Tabacalera who were dispossessed and removed from authority and control of the Cuban corporation as a result of the intervention or nationalization and their purported assignee (Jorge) had no right or authority to maintain the action in the name of Tabacalera and to recover the said account receivable; that the transactions and occurrences involved are governed and controlled by the laws, resolutions, decrees and actions of the Cuban Government; that this action should be dismissed under the act of state doctrine or the doctrine of *forum non conveniens,* or both.

Depositions were taken, admissions were made and additional affidavits were filed. The respondents moved for a summary judgment. The petitioner asserted that it was entitled to a summary judgment. The parties entered into a pre-trial stipulation (R. 149). A pre-trial conference was held.

Thereafter, on October 19, 1966, the district court made Findings of Fact and Conclusions of Law and held that the act of state doctrine was applicable and that the petitioner was entitled to a judgment as a matter of law (R. 162-189 and App. A., p. 1, *infra*).

The facts hereinafter set forth are material to the consideration of the questions presented.

Tabacalera, a corporation, was organized in 1954 under the laws of the Republic of Cuba. At all times material herein, its principal place of business was in Havana, Cuba, it was engaged in the business of selling leaf tobacco for use in the manufacture of cigars, and its

stockholders, directors and officers were Cuban citizens and nationals (R. 144; deposition of Severiano Jorge, pp. 3, 4, 22, 26; deposition of Jose Romano, pp. 40-45).

Tabacalera never qualified to do business, or had a place of business, in Florida or elsewhere in the United States.

At all times material herein, Severiano Jorge was a citizen and national of Cuba (R. 67; deposition of Severiano Jorge, pp. 3-5). He was the equitable owner of substantially all of the shares of capital stock of Tabacalera.

On September 24, 1954, Tabacalera executed a general power of attorney in favor of Severiano Jorge and Jose M. Romano, the latter being a Cuban citizen and national, an accountant and a vice-president and the treasurer of Tabacalera (R. 22-34).

The petitioner, Standard Cigar Company, is a Florida corporation with its principal place of business in Tampa, Florida. At all times material herein, the petitioner was and is engaged in the business of manufacturing cigars at its Tampa plant (R. 8).

On January 1, 1959, the revolutionary government of the Republic of Cuba, of which Fidel Castro is the Premier, went into power in Cuba and continuously since then has been in control in Cuba. Since January 7, 1959, such Cuban government has been and is recognized by the United States Government as the sovereign and legal government of the Republic of Cuba (R. 47-48). *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398 (1964); *F. Palicio y Compania, S.A. v. Brush,* 256 F.Supp. 481 (D.C. N.Y. 1966), *aff'd* 375 F.2d 1011 (2 Cir. 1967), *cert. den.,* 389 U.S. 830 (1968).

In July 1960, Tabacalera sold and delivered to petitioner in Havana, Cuba, three separate shipments of leaf tobacco of the aggregate sale and purchase price of $100,894.28 (R. 158). Pursuant to the agreement between the parties, the purchase price of each of the aforementioned shipments was payable by petitioner to Tabacalera in Havana, Cuba.

Also, under Cuban Law No. 13, of December 23, 1948, and Cuban Decree No. 1384, of April 9, 1951, both of which became effective long before the Castro regime, all obligations contracted or payable in Cuba after June 30, 1951, were required to be settled and expressed in Cuban currency. An English translation of Cuban Decree No. 1384 is attached hereto as App. D, *infra*.

Evidence introduced by the petitioner shows that the purchase price for each shipment was due 90 to 120 days after the date of shipment (R. 8-9). Evidence introduced by the respondents shows that the purchase price for each shipment was payable immediately upon the delivery thereof (R. 196).

About August 12, 1960, Mr. Jorge left Cuba never to return there (Deposition of Severiano Jorge, pp. 16-17). About September 1, 1960, Mr. Romano left Cuba, established a residence in Miami and never returned to his country (Deposition of Jose Romano, pp. 3, 26, 27).

Tabacalera continued in business in Cuba under the management of its stockholders, directors and officers until September 15, 1960, when Tabacalera, along with the other corporations, partnerships and firms constituting the Cuban tobacco industry, were intervened and taken over by the Castro government (R. 144, 145).

The intervention and seizure of the Cuban tobacco industry, including Tabacalera, were made pursuant to the authority of Cuban Law No. 647, of November 24, 1959 (App. G, p. 55, *infra*), as amended by Cuban Law No. 843, of June 30, 1960 (App. I, p. 64, *infra*), and Resolution No. 20260, of the Cuban Ministry of Labor, dated September 15, 1960 (R. 15-20, 144-145, App. J, p. 67, *infra*).

Under Cuban Law No. 647, the Cuban government was authorized to appoint an interventor for any corporation, partnership or business intervened. The law vested any such interventor with all the powers required to administer and direct the concern or enterprise intervened, and with all the powers regularly exercised by executives of the intervened party, for whom and in whose place and stead he was substituted. *F. Palicio y Compania, S.A. v. Brush, supra,* 256 F.Supp. at 483, 484 n. 1 and 2, 485 n. 4, D.C.N.Y. 1966, *aff'd* 375 F.2d 1011 (2 Cir. 1967), *cert. den.,* 389 U.S. 830 (1968).

Cuban Law No. 647 also expressly provided that any provisions of the law or regulations contrary thereto were repealed (App. G, p. 60, *infra*).

Resolution No. 20260 appointed Armando Lobato Alvarez the interventor for Tabacalera (R. 15-20). Under Law No. 647 and the resolution, he was vested with complete possession and control of Tabacalera as a business enterprise to the exclusion of the shareholders, directors, officers or other persons who would otherwise manage and conduct the affairs of the corporation. *F. Palicio y Compania, S.A. v. Brush, supra.*

In addition to the broad grant of powers vested in the interventor by Law No. 647, the resolution of intervention specifically bestowed upon the interventor,

among many other powers, the power to represent Tabacalera legally in courts and out of courts and any other facility necessary for the development of its function (R. 20 and App. J, pp. 70-71, *infra.*).

The purpose of the intervention and seizure of the Cuban tobacco industry by the Cuban government, as stated in Resolution No. 20260, was to increase employment, to improve the quality of tobacco products, to guarantee the supply of tobacco to customary markets, to take over businesses which had been abandoned leaving numerous debts and many workers unemployed, and to normalize the situation in the tobacco industry, insuring the stability of workers and their jobs and the production of tobacco and tobacco products in general (R. 15-17, App. J, pp. 67-68, *infra*).

At the time Tabacalera was intervened, Messrs. Jorge and Romano were in Florida (R. 145), and Tabacalera was heavily indebted to growers from whom it previously had purchased leaf tobacco during March, April and May 1960 and to others, including banks, in the aggregate amount of approximately $2,000,000.00 (R. 146).

On September 15, 1960, the interventor actually took over the management and control of Tabacalera including its warehouses, the leaf tobacco in its warehouses, its offices, furniture, equipment, books, records, bank accounts and all other properties and assets (R. 144-148). The interventor ousted those who had been in management and control of the corporation prior to the intervention, and those ousted have never had any further control or management of Tabacalera (R. 145; Deposition of Severiano Jorge, 17-20, 22; Deposition of Jose Romano, pp. 37-40).

For several weeks the interventor continued to do business and to sell and ship leaf tobacco in the name of Tabacalera, but, thereafter, the business was conducted in the name of an agency of the Cuban government (R. 146-148). The brass nameplate bearing the corporation's name was removed from the building it had occupied, and the number "No. 14" was assigned to the building (R. 147). The interventor continued to do business at the premises of Tabacalera, using the books, records, machinery, equipment and other property which had belonged to the corporation (R. 147). The leaf tobacco business, however, was conducted in the name of the Ministry of Exterior Commerce (R. 147-148).

For five or six weeks after the intervention, the interventor continued to do business and to sell and ship leaf tobacco in the name of Tabacalera (R. 146-147). The interventor wrote letters to customers of Tabacalera soliciting new business and directing such customers to pay to the corporation in Havana, Cuba, all sums due for tobacco purchased before the intervention (R. 35, 146).

Mr. Jorge, while in Florida, learned of the intervention during a telephone call to Cuba to Higinio Miguel Caso, the president of Tabacalera, on September 15, 1960, the day of the intervention (R. 197).

On September 16, 1960, the day following the intervention, from Miami, Mr. Jorge wrote to the petitioner on the letterhead of Tabacalera requesting that the balance due for the last several shipments of tobacco be sent to Tabacalera at Miami in his care as agent for it under the power of attorney executed by Tabacalera authorizing him to collect moneys due it (R. 21).

On October 5, 1960, from Havana, the interventor wrote to the petitioner on the letterhead of Tabacalera stating that the Cuban government desired to continue to sell leaf tobacco to the petitioner, forwarding a copy of the petitioner's statement of account with Tabacalera, requesting that the same be settled in due time by remittances directly to the corporation in Havana, *and informing the petitioner that no person or entity whatsoever was authorized to collect the account in Tabacalera's name in the United States (R. 11, 35).*

It was the position of the interventor that the Cuban government was entitled to collect the account of the petitioner and the accounts of other customers of Tabacalera who had purchased tobacco before the intervention (R. 146-147).

On October 8, 1960, from Miami, Mr. Romano wrote to the petitioner, on the letterhead of Tabacalera, sending a statement of the account for the balance due by the petitioner to Tabacalera (R. 11-12, 38-39).

On October 12, 1960, the Miami attorneys who are prosecuting this litigation for the respondents wrote to the petitioner regarding the balance due from the petitioner to Tabacalera, recognizing that the interventor laid claim to the balances due and urging the petitioner not to recognize the claim of the interventor (R. 13, 40-41).

The petitioner did not pay Tabacalera in care of the interventor in Havana or in care of Mr. Jorge in Miami. Thereupon, on October 26, 1960, Mr. Jorge caused this suit to be filed in the name of Tabacalera, as plaintiff (R. 198).

While this suit was pending, on April 1, 1961, Mr. Romano, describing himself as vice president and attorney-in-fact of Tabacalera, executed in the name of Tabacalera a purported assignment to Mr. Jorge, individually, of all of Tabacalera's right, title, interest, claim and demand in and to certain accounts receivable and all sums due thereunder owing by the Antonio Company, a Florida corporation, and Standard Cigar Company, a Florida corporation (R. 49-50; Deposition of Jose Romano, pp. 46-52).

Thereafter, on April 3, 1961, Mr. Jorge caused a suit to be filed in a state court in Florida in the names of Tabacalera Severiano Jorge, S.A., a Cuban corporation, and Severiano Jorge against the Antonio Company, a Florida corporation, Standard Cigar Company, a Florida corporation, and the Republic of Cuba. *Jorge v. Antonio Company,* 19 Fla. Supp. 101 (Cir. Ct., Hillsborough County, Fla., 1961). In that suit the plaintiffs sought a declaratory decree as to the rights and obligations of the parties therein, including the rights of Mr. Jorge as alleged sole stockholder of Tabacalera and assignee of the latter's claims against Antonio Company and Standard Cigar Company.

Shortly after the state court suit was instituted, and on May 21, 1961, the district court dismissed the case at bar on the ground of *forum non conveniens* and alluding to the act of state doctrine (R. 52-54). An appeal ensued. The federal appellate course heretofore taken in this action has been described, *supra.*

While the first appeal in this federal court action was pending, the state court suit was dimissed, on November 28, 1961, upon the ground of *forum non conveniens* and because the actions of the Republic of Cuba in intervening and seizing Tabacalera were not reviewable

by the state court under the act of state doctrine. *Jorge v. Antonio Company, supra.* The plaintiffs in the state court suit appealed, and the state appellate court determined to suspend proceedings in the state court appeal until this action in federal court was tried and determined. *Jorge v. Antonio Company,* 151 So.2d 467 (Dist. Ct. App. Fla., 2d Dist. 1963)

From September 15, 1960, until the present time, the Cuban government, through its interventor or otherwise, has remained continuously in management and control of Tabacalera and its properties and assets. Although "intervention" procedure does not appear to effectuate a formal transfer of title from Tabacalera, its stockholders, directors and officers to the Cuban government, the end result is indistinguishable in practical result from complete confiscation and nationalization. *F. Palicio y Compania, S.A. v. Brush, supra,* 256 F.Supp. at p. 484. Since September 15, 1960, the stockholders, directors and officers of Tabacalera at the time of its intervention have been ousted, without their consent, from all of the properties and excluded from any participation in the business of Tabacalera. Their rights to any receipts and profits have been eliminated. No compensation has been provided to them for their interest as stockholders or otherwise.

The Cuban government has continued in the leaf tobacco business, trading domestically in Cuba and internationally using the properties and facilities which belonged to Tabacalera at the time of the intervention (R. 148). It has collected accounts receivable due for tobacco sold before and after the intervention (R. 146-147; Deposition of Jose Romano, p. 38). Until the United States proclaimed an embargo on trade with Cuba, Proclamation No. 3447, February 3, 1962, 3 C.F.R., 1959-

1963 Compilation, 157, the Cuban government sold and delivered tobacco in Cuba and in the United States to purchasers who used the same in this country (R. 147-148).

The Cuban government, through its interventor or otherwise, did not institute or authorize the institution and maintenance of this action. Likewise, the Cuban government did not assign or authorize the assignment by Tabacalera to Mr. Jorge of the account receivable by Tabacalera from the petitioner. The Cuban government has never ratified, approved or confirmed the institution and maintenance of this action or the assignment of the said account receivable to Mr. Jorge.

After considering the foregoing facts, the district court determined (1) that the act of state doctrine was applicable in this action, (2) that, by virtue of the intervention and takeover of Tabacalera, the Cuban government, by its interventor or otherwise, became vested with the sole right to demand payment of, to collect and to sue to collect the account receivable due by the petitioner to Tabacalera, (3) that those who instituted or caused the institution of this action in the name of Tabacalera had no right or authority to do so, and (4) that the purported assignment of the account receivable in the name of Tabacalera to Severiano Jorge was unauthorized and ineffective (R. 187-189). Accordingly, the district court entered its final judgment dismissing the action (R. 190, App. A, p. 1, *infra*).

The court of appeals reversed the final judgment of the district court, and held (1) that the situs of the debt due by the petitioner to Tabacalera was in Florida, the only place the debt could be collected from the petitioner, that such indebtedness was not "property within Cuba's

own territory" which the Cuban government acquired by virtue of its intervention, seizure and takeover of Tabacalera, and that, therefore, the act of state doctrine is not applicable in this action, and (2) that the intervention, seizure and takeover of Tabacalera by the Cuban government and its interventor did not operate to revoke or suspend the power of attorney theretofore given by Tabacalera to Messrs. Jorge and Romano, and that the assignment which Mr. Romano executed in the name of Tabacalera in his capacity as attorney-in-fact therefor, even though made more than five months after the intervention, was a valid assignment which gave Mr. Jorge the right to collect the account from the petitioner.

BASIS OF JURISDICTION IN DISTRICT COURT

Jurisdiction in the district court was based on diversity of citizenship and the fact that the amount involved exceeds the sum of $10,000.00, exclusive of interest and costs.

The respondents, plaintiffs in the district court, were citizens of the Republic of Cuba, although after the entry of the district court's final judgment on October 19, 1966, Mr. Jorge became a naturalized citizen of the United States on January 27, 1967. The petitioner, defendant in the district court, was and is a citizen of the State of Florida.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

1. That part of the decision of the court of appeals sought to be reviewed which relates to the first question presented for review, concerning the situs of the debt which is the subject of this litigation and the applicability herein of the act of state doctrine, is in conflict with decisions of other courts of appeal on the

same matter and is a decision of a federal question in a way in conflict with applicable decisions of this Court or is a decision of an important question of federal law which has not been, but should be, settled by this Court.

Argument concerning this question will be divided into two parts—first, a discussion of the situs of the account receivable or debt, and, secondly, a consideration of the applicability herein of the act of state doctrine.

A. An account receivable is the right to receive payment of a debt, is a chose in action arising out of contract, and is intangible personal property. *Boulevard Nat. Bank of Miami v. Air Metals Indus.*, 176 So. 2d 94 (Fla. 1965).

The account receivable or debt involved herein arose out of three contracts which were made and performed or to be performed in Cuba. The leaf tobacco which was the subject of the contracts was delivered by Tabacalera to and accepted by the petitioner in Cuba. Pursuant to the agreements of the parties and the applicable Cuban monetary and currency control laws, the sale and purchase price of each of the shipments was to be paid by the petitioner to Tabacalera in Cuba.

Tabacalera was a Cuban corporation having its principal place of business in Cuba and having no place of business in the United States.

Florida and the United States had no contacts with the transactions, unless it be said that it had a contact because one of the contracting parties, the petitioner, was a Florida corporation, having its principal place of business in Tampa, Florida, and was amenable to suit

there. Insofar as the transactions between the petitioner and Tabacalera were concerned, however, nothing occurred or was to occur in the United States.

The foregoing facts were and are undisputed, and it is upon the basis of such facts that the situs of the debt must be determined.

The court of appeals expressly recognized and stated that "resolution of the issue of the situs of the debt determines whether the Act of State Doctrine applies" (App. B, p. 38, *infra*).

The court of appeals then said (App. B, p. 38, *infra*):

> "Therefore we must fashion a rule of federal law to determine whether in dealing with this particular species of intangible property the overriding concern of international relations of the United States and Cuba requires that we give effect to the confiscatory policies of the Cuban government to funds which are fully within the physical control of the American courts, and clearly without the physical control of the courts of the government of Cuba."

The only legal authorities cited by the court of appeals with respect to the situs of intangible personal property are those set forth in the following statement of the court (App. B, pp. 37-38, *infra*):

> "* * * The situs of intangible property is about as intangible a concept as is known to the law. The situs may be in one place for ad valorem tax purposes, *Farmers Loan and Trust Co. v. State of Minnesota*, 280 U.S. 204; it may be in another place for venue purposes, i.e., garnishment, *Chicago R.I. &*

> *P.R. Co. v. Sturm,* 174 U.S 710; it may be in more than one place for tax purposes in certain circumstances, *Curry v. McCanless,* 307 U.S. 357; it may be in still a different place when the need for establishing its true situs is to determine whether an overriding national concern, like the application of the Act of State Doctrine is involved."

In concluding that the situs of the debt was in Florida, the only place the petitioner could be sued, the court of appeals said (App. B, p. 40, *infra*):

> "Here, we do not have a case in which affected third parties are litigating over the accomplished fact of 'takeover' of an asset in Cuba. We are dealing rather with a change in the form of the asset from an account receivable into cash, which can be accomplished only in the courts of the United States. In attempting to fashion a rule fixing the situs of an indebtedness for the very limited purpose of deciding whether it is 'property *within* [Cuba's] *own territory,*' we find no compelling requirement that we accept the fiction that the situs is irrevocably at the domicile of the creditor, a fiction sometimes used for other commercial purposes. For the purpose of our inquiry we find this debt was not property in Cuba."

The court of appeals did not cite a single authority to support its conclusion as to the situs of the debt in question. In fact, the court expressly stated that it "must fashion a rule of federal law to determine" the situs of this particular species of intangible property. In doing so, the court of appeals overlooked or disregarded the conflicting decisions of other courts of appeal and of this Court.

As previously mentioned, accounts receivable or debts are choses in action and are intangible personal property. Thus, decisions of other courts as to the situs

of debts and other choses in action, such as claims under insurance policies and other contracts and for libel, are pertinent.

In *Caldwell v. Armstrong,* 342 F.2d 485 (10 Cir. 1965), the court had under consideration the situs of a matured, single-premium endowment insurance policy upon the life of one Caldwell, whose domicile was in Wyoming, issued by New England Life Insurance Company, which had its office in Massachusetts. Caldwell went into bankruptcy in Wyoming. In the bankruptcy proceeding his former wife sought a lien upon the policy for sums due her pursuant to a decree of divorce previously entered in Wyoming, and the United States sought a lien on the proceeds of the policy because of levies for unpaid federal income taxes due by Caldwell. With respect to the situs of the insurance policy and the right of the divorce court in Wyoming to act with respect thereto, the court said, 342 F.2d, at 489:

> "Because the parties to the divorce were residents of Wyoming, the only problem is whether the power of the court may be exercised in regard to property which is in Massachusetts where the insurer has its office. *The answer is that for purpose of ownership and transfer the situs of personal property is that of the domicile of the owner.* Accordingly, a Wyoming court with its broad statutory powers could order an assignment of the fund, and create a lien in favor of the assignee, to effectuate an award to the divorced wife." (Emphasis supplied)

In the last cited case, the Tenth Circuit decided that for the purpose of determining matters with respect to the *ownership* of or the *transfer* of title to intangible personal property in the form of a matured endowment insurance policy the situs thereof was at the

domicile of the owner (creditor) not at the domicile of the insurer (debtor). That decision is in conflict with the decision sought to be reviewed.

In the case *sub judice,* the court of appeals wholly failed to mention the situs of intangible personal property for the purpose of determining ownership and transfer. The court of appeals referred only to decisions relating to the situs of intangibles for the purpose of taxation of the ownership or transfer thereof, *Farmers Loan and Trust Co. v. State of Minnesota,* 280 U.S. 204 (1930); *Curry v. McCanless,* 307 U.S. 357 (1939), and for venue purposes, i.e., garnishment, *Chicago R.I. & P.R. Co. v. Sturm,* 174 U.S. 710 (1899). None of those cases support the decision of the court of appeals. The two cases relating to taxation of intangibles clearly show that intangibles may be taxed at the domicile of the owner and in one case that they may be taxed elsewhere also. Accordingly, the decision of the court of appeals is in conflict with those cases.

The decision sought to be reviewed also conflicts with the decision in *Marteney v. United States,* 245 F.2d 135 (10 Cir. 1957). In that case, Wayne S. Marteney, who was plaintiff in a libel suit, being indebted to his attorneys on a promissory note, agreed that his attorneys should receive the balance due on the note from Marteney's share of any judgment which might be awarded in the libel action. In discussing the situs of the chose in action, Marteney's claim in the libel suit, the court said, 245 F.2d, at 140:

> " * * * The property involved in this case was personal property. The situs of personal property is generally considered to be that of the domicile of the owner. Grand Prairie State Bank v. United

States, 5 Cir., 206 F.2d 217; Investment & Securities Co. v. United States, 9 Cir., 140 F.2d 894, 11 Am.Jur., Conflict of Laws, § 65 p. 352. * * * "

In *Investment & Securities Co. v. United States,* 140 F.2d 894 (9 Cir. 1944), the court held that the situs of an amount due by the Exchange National Bank of Spokane, Washington, to Judson G. Rosebush, as one of the bank's former shareholders, whose domicile was in Wisconsin, was intangible personal property which had its situs in Wisconsin. This decision of the Ninth Circuit holding that the situs of a debt is at the domicile of the creditor not at the domicile of the debtor is in conflict with the decision sought to be reviewed.

The Fifth Circuit's decision also conflicts with decisions of this Court which determined the situs of debts and other choses in action for tax purposes.

In *Cleveland, etc., R. R. Co. v. Pennsylvania,* 15 Wall. 300, 320 (1873), this Court said:

"Corporations may be taxed, like natural persons, upon their property and business. But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors, is simply to misuse terms. *All the property there can be, in the nature of things, in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicil, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations in numerous adjudications, but no num-*

ber of authorities and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement." (Emphasis supplied)

The foregoing statement was quoted with approval in *Farmers' Loan & Trust Co. v. State of Minnesota,* 280 U.S. 204 (1930), *supra.* In that case, a decedent while domiciled and residing in New York, had owned and kept within that state negotiable bonds and certificates of indebtedness issued by the State of Minnesota and the cities of Minneapolis and St. Paul, none of which had any connection with the business carried on by or for the decedent in Minnesota, and all of which passed under his will, which was probated in New York, where he died. The State of Minnesota attempted to assess an inheritance tax on the transfer of such securities. This Court held that the situs for taxation of the securities was in New York at the domicile of their owner, but not in Minnesota.

In *Curry v. McCanless,* 307 U.S. 357 (1939) *supra,* cited by the court of appeals, the issue was whether the States of Alabama and Tennessee could each impose death taxes upon the transfer of an interest in intangibles held in trust by an Alabama trustee but passing under the will of a beneficiary decedent domiciled in Tennessee. After discussing the principles of taxation applicable to intangibles, this Court held that the intangibles were taxable in both states—in Tennessee the place of domicile of their beneficial owner and the creator of the Alabama trust and in Alabama because the trustee there held the legal title to the securities and limited powers of control thereof. The intangibles had a situs for tax purposes in both states.

The foregoing decisions with respect to the situs of intangibles support the petitioner's contention that their situs was in Cuba at the domicile of Tabacalera. The account receivable belonged to Tabacalera, which confined its activities to the place of its domicile. Tabacalera did not create or use the account receivable in any business in the United States.

Tabacalera was an artificial entity, a creature of Cuban law and the devolution of title to its assets must solely be determined by Cuban law. *Russian Reinsurance Co. v. Stoddard,* 240 N. Y. 149, 147 N.E. 703, 707, 709 (1925).

The mere presence of the debtor, petitioner, in the United States did not and could not make the situs of the debt in Florida, for the purpose of determining the ownership or transfer or amount thereof. Such a conclusion or decision could have far reaching effects upon foreign creditors who had acquired accounts receivable in their countries with respect to transactions there but whose debtors were in the United States.

It, for example, would extend the jurisdiction of our courts beyond their present statutory and constitutional boundaries. The court of appeals said, erroneously petitioner feels, that the *res* was in the United States by virtue of the petitioner (debtor) being here. As between Tabacalera and petitioner that clearly is not correct, because, if it were, the petitioner could institute an action in the United States against Tabacalera asserting that the *res* (debt) is here and challenging the amount of the debt or Tabacalera's ownership thereof. This is impossible under our present system, because there is and would be no way of serving process upon a Cuban corporation having no one in the United States upon whom binding process could be served.

In summary, the decision sought to be reviewed is in conflict with the aforementioned decisions of the Ninth and Tenth Circuits and of this Court with respect to the situs of the debt involved.

B. In its opinion, the court of appeals correctly stated the act of state doctrine as announced in *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398 (1964) but erroneously, petitioner submits, decided that such doctrine is not applicable in this action.

The classic American statement of the act of state doctrine is that every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. *Banco Nacional de Cuba v. Sabbatino, supra.*

As previously mentioned, the court of appeals decided that the intervention, seizure and takeover by the Cuban government of Tabacalera and its assets did not amount to a taking of the account receivable or debt which is the subject of this suit within Cuba's own territory within the language used by this Court in *Sabbatino.*

The decision of the court of appeals is in conflict with the decisions of this court in *United States v. Belmont,* 301 U.S. 324 (1937) and *United States v. Pink,* 315 U.S. 203 (1942) and with the decision of the Second Circuit in *Steingut v. Guaranty Trust Co. of New York,* 58 F.Supp. 623 (D.C.N.Y. 1944), *aff'd* 161 F.2d 571 (2 Cir. 1947), *cert. dismissed,* 332 U.S. 753, *cert. den.* 332 U.S. 807.

In those cases, the court in each instance decided that the seizure or nationalization of Russian corporations by the Soviet government, which foreign government was recognized by the United States, had extraterritorial effect, and would transfer to the Soviet government moneys held by individuals and corporations in the United States and owed to such Russian corporations.

In *United States v. Belmont, supra,* Petrograd Metal Works had deposited money with August Belmont, a private banker doing business in New York City. In 1918, the Soviet government dissolved, terminated and liquidated the corporation (together with other Russian corporations) and nationalized and appropriated all of its properties and assets of every kind and wherever situated, including the deposit account with August Belmont. As a result, the deposit became the property of the Soviet government and so remained until November 16, 1933, at which time the Soviet government released and assigned to the United States government all amounts due the Soviet government from American nationals, including the deposit account of the Russian corporation with August Belmont. The recognition of the Soviet government by the United States government was coincident with the aforementioned assignment and release.

The executors of August Belmont failed and refused to pay the amount of the deposit account upon demand duly made by the United States, and the latter instituted suit against the executors to recover the amount of the deposit account. A motion to dismiss the complaint for failure to state facts sufficient to constitute a cause of action was sustained by the district court, and its judgment was affirmed by the circuit court of appeals. The

circuit court of appeals took the view that the situs of the bank deposit was within the State of New York; that in no sense could it be regarded as an intangible property right within Soviet territory; and that the nationalization decree, if enforced, would put into effect an act of confiscation which would be contrary to the public policy of the State of New York.

This Court, applying the act of state doctrine to the facts which existed in that case, said, at 301 U.S. 332:

> "* * * *What another country has done in the way of taking over property of its nationals, and especially of its corporations, is not a matter for judicial consideration here. Such nationals must look to their own government for any redress to which they may be entitled.* So far as the record shows, only the rights of the Russian corporation have been affected by what has been done; and it will be time enough to consider the rights of our nationals when, if ever, by proper judicial proceeding, it shall be made to appear that they are so affected as to entitle them to judicial relief. *The substantive right to the moneys, as now disclosed, became vested in the Soviet government as the successor to the corporation;* and this right that government has passed to the United States. It does not appear that respondents have any interest in the matter beyond that of a custodian. Thus far no question under the Fifth Amendment is involved.
>
> "It results that the complaint states a cause of action and that the judgment of the court below to the contrary is erroneous. * * *" (Emphasis supplied)

In *United States v. Pink, supra,* there was a controversy over assets in the hands of the Superintendent of Insurance of the State of New York, of the New York branch of the First Russian Insurance Company, a Russian corporation which had been nationalized by the

Soviet government, and which assets were assigned in 1933 by the Soviet government to the United States government. The United States sued to recover such assets. Among the issues involved in that litigation were whether claims of foreign creditors of the Russian insurer were superior to the assignment *and whether any surplus remaining after the payment of foreign creditors should be paid to a quorum of the board of directors of the Russian insurer.* In the *Pink* case, this Court said at 315 U.S. 234:

> "We hold that the right to the funds or property in question became vested in the Soviet Government as the successor to the First Russian Insurance Co.; that this right has passed to the United States under the Litvinov Assignment; and that the United States is entitled to the property as against the corporation and the foreign creditors."

The case of *Steingut v. Guaranty Trust Co. of New York, supra,* involved the effect of certain decrees of the Soviet government which nationalized all existing Russian private joint stock banks and banking houses and expropriated their assets. One of the banks, Russo-Asiatic Bank, had a credit balance with the Guaranty Trust Company, in New York. The Soviet government, upon its recognition by the United States government, assigned to the latter the credit balance of the Russian bank. Upon the authority of the *Belmont* and *Pink* cases, the district court held that, under the nationalization decrees, the Soviet government succeeded to the rights of the Russian bank; that the nationalization decrees had extraterritorial effect upon the deposit account in the New York bank; and that the United States acquired the deposit account by virtue of an assignment from the Soviet government. The decision was affirmed by the circuit court of appeals and all petitions for certiorari arising out of the litigation were dismissed or denied.

The *Belmont, Pink* and *Steingut* cases are much stronger decisions than necessary to show the applicability of the act of state doctrine in the case at bar. There the bank deposits, credit balances and similar assets were in the hands of American nationals in the United States. The transactions had occurred in the United States. The relationship of debtor and creditor existed between the Russian corporations and the American nationals. The debts were created and were payable in the United States in the currency of our country. The nationalization of the Russian corporations and the appropriation of their assets took place in Russia. Even under those facts, this Court held that what the Soviet government had done in the way of taking over property of its nationals, *and especially of its corporations,* was not a matter for judicial consideration in the United States, and that the Russian nationals must look to their own government for any redress to which they may be entitled.

In the case at bar, the debt due a Cuban corporation by a Florida corporation was created and was payable in Cuba. The Cuban government, in Cuba, seized and intervened the Cuban corporation, and took over the management and control of the corporation and its assets, including the debt here involved. The Cuban interventor demanded of the petitioner that the debt be paid to the Cuban corporation in Cuba, and informed the petitioner that no one was authorized to collect the debt in the United States.

After the *Sabbatino* decision, the United States enacted the Hickenlooper Amendment to the Foreign Assistance Act of 1964, which, as amended, 22 U.S.C., § 2370 (e) (2), modified the effect of *Sabbatino* in certain respects, but not in any respect which would be controlling

of this action. The Hickenlooper Amendment expressly provides that it does not apply to acts of a foreign government which are not contrary to international law. No question of international law is involved in this litigation because the acts of a state directed against its own nationals, here Tabacalera and Mr. Jorge, do not give rise to questions of international law. *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 433 n. 37; *F. Palicio y Compania, S.A. v. Brush,* 256 F.Supp. 481 (D.C.N.Y. 1966), *aff'd,* 375 F.2d 1011 (2 Cir. 1967), *cert den.,* 389 U.S. 830 (1968); *United States v. Belmont, supra; Pons v. Republic of Cuba,* 294 F.2d 925 (D.C. Cir. 1961), *cert. den.,* 368 U.S. 960.

F. Palicio y Compania, S.A. v. Brush, supra, involved three Cuban corporations, a Cuban partnership and a Cuban limited partnership, all a part of the Cuban tobacco industry, and all of which were intervened and taken over by the Cuban government at the same time and under the same intervention laws and the same intervention resolution as Tabacalera. In discussing the application of the act of state doctrine to the interventions there under consideration, the district court said, 256 F.Supp, at 486:

> "It is plain that the decrees of intervention or nationalization involved in this case are prototypes of acts of state to which the act of state doctrine applies. See Restatement (Second), Foreign Relations Law of the United States, § 41, Comment d (1965). * * *"

From the foregoing, it is clear that the intervention, seizure and takeover of Tabacalera and its assets, including the account receivable involved herein, was an act of state on the part of the Cuban government, upon which the courts of this country should not sit in judgment.

2. That part of the decision of the court of appeals sought to be reviewed which relates to the second question presented for review, concerning the effect of the intervention, seizure and takeover of Tabacalera upon the power of attorney held by Messrs. Jorge and Romano and the validity of the assignment which Mr. Jorge executed in the name of Tabacalera in his capacity as attorney-in-fact therefor, is in conflict with a decision of another court of appeals on the same matter and is a decision of a federal question in a way in conflict with an applicable decision of this court.

The petitioner asserts that the decision of the court of appeals conflicts with the decision of the Second Circuit in *F. Palicio y Compania, S.A. v. Brush,* 375 F.2d 1011 (2 Cir. 1967) *cert. den.,* 389 U.S. 830 (1968), *affirming* per curiam 256 F.Supp. 481 (S.D. N.Y. 1966), with respect to the effect of the intervention of Tabacalera by the Cuban government and with respect to the powers and authority of the interventor.

Brush, supra, involved the intervention of three Cuban corporations, a Cuban partnership and a Cuban limited partnership, by the Cuban government pursuant to the same intervention laws and resolution as was and is applicable to the intervention of Tabacalera.

The facts in each case are substantially the same insofar as they clearly establish that on September 15, 1960, the date of the intervention, the Castro government and its interventor took possession of the businesses and assets in Cuba of each of the entities and ousted the owners and those who had managed and controlled the enterprises on their behalf. The interventors assumed possession and control and actually operated the businesses thereafter on behalf of the government.

The former owners have been ousted without their consent from all the properties and excluded from any participation in the businesses. Their rights to any receipts and profits have been eliminated and no compensation has been provided.

In *Brush, supra,* the district court said, 256 F.Supp., at 483-484:

> "On September 15, 1960, however, the Castro government of Cuba, acting under Cuban law, took possession of the businesses and assets in Cuba of each of the entities and ousted the owners and those who had managed and controlled the enterprises on their behalf. The Cuban government designated so-called "interventors" for each of the entities, who assumed possession and control and actually operated the businesses thereafter on behalf of the government. Under 'intervention' procedure the interventor is vested with complete possession and control of a business enterprise to the exclusion of the officers, directors, shareholders, partners or other persons who would otherwise manage and conduct it. Though intervention does not appear to effectuate a formal transfer of title from the former owners and managers to the governmental authorities, the end result is indistinguishable in practical effect from complete confiscation — for almost six years the former owners have been ousted without their consent from all the properties and excluded from any participation in the businesses. Their rights to any receipts and profits have been eliminated. No compensation has been provided.
>
> "The intervention of four of the entities has remained in effect from September 15, 1960 until the present. The fifth entity—Cifuentes—was nationalized on June 29, 1961 by resolution of the Cuban Central Planning Board."

The Fifth Circuit said that the act of the Cuban government amounted only to "intervention for the period of one year" (App. B, p. 34, *infra*). In footnote 3 of its opinion, the court said that the record is void of any proof of what actually was the status of affairs, although it may feel fairly certain that the Cuban government has not affirmatively relinquished whatever rights it had to supplant the original directors and stockholders of Tabacalera. The Fifth Circuit said that there was in effect a limited temporary receivership (App. B, p. 37, *infra*).

The last mentioned portions of the decision of the Fifth Circuit are in direct conflict with that portion of the decision of the Second Circuit which said that "Though intervention does not appear to effectuate a formal transfer of title from the former owners and managers to the government authorities, the end result is indistinguishable in practical effect from complete confiscation * * * "

The Fifth Circuit held that the power of attorney given by Tabacalera to Messrs. Jorge and Romano could be revoked only by the execution of a similar document filed in the same registry in which the power of attorney had been filed; that the Cuban government did not give its interventor power to revoke outstanding powers of attorney and that the interventor did not attempt to do so; that the Cuban government and the interventor failed to take the steps which otherwise might have divested Tabacalera and Messrs. Jorge and Romano of the right to assign the account receivable; that the Cuban government did not actually interfere with the right of Tabacalera to collect the account in the manner in which the company sought to pursue the remedy in federal court in Tampa.

The last mentioned portions of the decision of the Fifth Circuit are in conflict with those portions of the decision in *Brush,* which decided that under "intervention" procedure the interventor is vested with complete possession and control of a business enterprise to the exclusion of the officers, directors, shareholders, partners or *other persons* who would otherwise manage and conduct it. 256 F.Supp. 484. The decision in *Brush* was predicated upon that portion of Cuban law No. 647 which reads as follows (App. G, p. 57):

> "Interventors designated pursuant to the provisions of this law shall have the powers needed to administer and direct the enterprise or center of labor covered thereby and all the powers appertaining to its executives, for whom and in whose place and stead he is substituted, provided that the resolution itself that orders the intervention and names the interventor may specify the scope of his functions and powers."

The Fifth Circuit recognized that the intervention served to revoke any powers of the stockholders, officers and directors of Tabacalera, but said that it did not revoke the power of attorney because no formal revocation thereof was authorized or attempted. The court of appeals overlooked that a power of attorney can be revoked by operation of law, by death or incompetency of the principal or attorney-in-fact or by a formal revocation.

As an illustration of the revocation of a power of attorney by operation of law, a power of attorney authorizing an attorney-in-fact to collect and receive accounts and money due the principal is revoked by the bankruptcy of the principal. *In re Columbia Shoe Co.,* 289 F. 465 (2 Cir. 1923).

Petitioner submits that it is inconsistent and in conflict with *Brush* to say that intervention substitutes the interventor for the officers, stockholders and directors of a corporation but not for its attorneys-in-fact.

The decision of the Fifth Circuit also conflicts with the decision of this Court in *Sabbatino, supra,* where the Court set forth the test to be applied as to the effect of an expropriation decree, 376 U.S. 415, n. 17, as follows:

> " * * * Were any test to be applied it would have to be what effect the decree would have if challenged in Cuba. If no institution of legal authority would refuse to effectuate the decree, its 'formal' status—here its argued invalidity if not properly published in the Official Gazette in Cuba—is irrelevant. It has not been seriously contended that the judicial institutions of Cuba would declare the decree invalid."

The interventor appointed by the Cuban government claimed the right to collect the account receivable owed to Tabacalera by the petitioner, requested that the account be paid to Tabacalera in Cuba and stated that no person or entity whatsoever was authorized to collect the same in Tabacalera's name in our country. The real test as to the effect of the intervention and the acts of the interventor pursuant thereto would be what effect they would have if challenged in Cuba.

The Fifth Circuit readily recognized that Mr. Jorge, as assignee of Tabacalera, could not prevail, in Cuba or its courts, in any contest wherein he asserted that he was entitled to recover the account receivable, (App. B, p. 34, *infra*). The court of appeals, however, did decide that the intervention, the Cuban government and its interventor did not cancel or revoke the power of attorney and that the assignment of the account receivable made

pursuant to the provisions of the power of attorney was valid and authorized Mr. Jorge to collect the accounts receivable. That decision of the Fifth Circuit conflicts with the test required to be applied pursuant to the decision in *Sabbatino, supra.*

If the courts of Cuba would not uphold the power of attorney, as the court of appeals recognized, then the court of appeals erred, petitioner submits, in declaring valid the power of attorney and assignment made to Mr. Jorge pursuant thereto.

In the respects set forth above, the decision of the court of appeals sought to be reviewed conflicts with the decisions in *Brush* and *Sabbatino.*

COURT OPINIONS DELIVERED

A copy of the opinion of the court of appeals delivered upon the rendering of the judgment sought to be reviewed is appended as App. B, p. 22, *infra.* A copy of the findings of fact and conclusions of law of the district court delivered upon the rendering of its final judgment is appended as App. A, p. 1, *infra.*

JUDGMENT SOUGHT TO BE REVIEWED

A copy of the judgment of the court of appeals sought to be reviewed is appended as App. M, p. 75, *infra.*

CONCLUSION

For the foregoing reasons, it respectfully is submitted that this petition for a writ of certiorari should be granted.

DATED at Tampa, Florida, August 10, 1968.

Respectfully submitted,

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